85- 15

No.

Office - Supreme Court, U.S.
FILED
JUN 24 1985
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____ term, 1984

DUKER BOGARD - - - - - Petitioner

versus

COMMONWEALTH OF KENTUCKY - Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

JAMES F. CLAY, SR.
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25 pp

QUESTION PRESENTED

May a criminal defendant challenge the legal authority of his warrantless arrest by a "de facto" police officer?

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____ term, 1984

DUKER BOGARD - - - - - *Petitioner*

v.

COMMONWEALTH OF KENTUCKY - - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

PETITION

Petitioner, Duker Bogard, respectfully prays a writ of certiorari be issued to review the opinion of the Kentucky Court of Appeals rendered November 2, 1984, as modified November 9, 1984.

OPINION BELOW

The opinion of the Kentucky Court of Appeals is reported as *Bogard* v. *Commonwealth,* 687 S. W. 2d 533 (Ky. App. 1984), and appears herein as Appendix A.

JURISDICTION

The opinion of the Kentucky Court of Appeals was entered November 2, 1984. A timely petition for rehearing, modification, or extension was denied by the Kentucky Court of Appeals on January 11, 1985, the order for which appears as Appendix B. A timely

petition for discretionary review was denied by the Kentucky Supreme Court on April 24, 1984, the order for which appears as Appendix C. This petition is filed within sixty days from April 24, 1984. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1257 (3).

CONSTITUTIONAL PROVISIONS AT ISSUE

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On September 9, 1982, Duker Bogard was arrested without a warrant by one holding himself out to be a police officer of the City of Danville, Kentucky. Petitioner was charged with the misdemeanor of driving under the influence of intoxicants. Petitioner moved the trial court to suppress all evidence obtained in this encounter and to quash the citation because the police officer had assumed his position in violation of state and local law. The trial court agreed that the arrest was illegal, and the case was dismissed.

Subsequent appeals ultimately yielded the reported opinion which held that the officer, "because he was not a qualified voter on Boyle County, did not qualify as a police officer of the City of Danville at the time he issued the DUI citation against Bogard." *Bogard* v. *Commonwealth,* 687 S. W. 2d 533, 535 (Ky. App. 1984). The error below occurred when the Kentucky Court of Appeals further determined that the officer was a "de facto" officer.

> [H]e was acting under color of authority and as far as the public or third persons are interested, acting as if he were a "de jure" officer. As such his official acts, performed in good faith, are made valid for motives of public policy to preserve third persons' and the general public's rights. His acts cannot be attacked in a collateral proceeding. *Id.*, p. 536 (citations omitted).

The opinion concluded that the arrest and citation were not invalid. The case was remanded for trial.

The constitutional matters addressed by this petition were raised expressly or implicitly at the hearing on the suppression motion which was sustained by the trial court. Denial of rights guaranteed by the Fourth Amendment was argued in petitioner's brief in the Kentucky Court of Appeals, pages 5-7. Argument on the Fourth Amendment also appears in petitioner's reply brief in the Kentucky Court of Appeals at page 2. Petitioner's claims to protection of the Fourteenth Amendment first appear in his petition for rehearing, modification, or extension in the Kentucky Court of Appeals at page 3. Claims of denial of protection under the Fourth, Fifth, and Fourteenth Amendment appear in petitioner's motion for discretionary review to the Kentucky Supreme Court, pages 4, 6-7.

ARGUMENT

At the time of Mr. Bogard's arrest the Kentucky Revised Statutes required all police officers of third class cities, including Danville, Kentucky, to be "a qualified voter in the county containing the city of employment. . . ." KRS 95.440(2) (1980). An ordinance of the City of Danville, Kentucky, in effect at the time of arrest specifically incorporated the provisions of KRS 95.440(2) and additionally required such police officers to be registered voters of the city. Danville, Kentucky Ordinance 10.110 (1977). In Kentucky only a peace officer may arrest for a misdemeanor. KRS 431.005 (1980).

Kentucky has apparently balanced petitioner's Fourth Amendment freedom from unreasonable seizure of his person and Fifth Amendment freedom from deprivation of liberty without due process of law against a vague public policy of preserving third persons' and the general public's unnamed rights. Presumably these rights, which are not mentioned by the state court, include the freedom to unfettered exercise of the police power. Kentucky has determined that the scale tips toward the police power instead of individual freedom. By its decision the Kentucky Court of Appeals has invested the governing bodies of Kentucky municipalities with the power completely to ignore state law or municipal ordinance in the qualification and appointment of police officers. It accomplishes this end by refusing to permit one injured by the illegal officer from challenging the wrong.

At least one court of last resort has determined this issue contrary to the rule in Kentucky. In that case the Florida Supreme Court expressed the preliminary question in matters of *de facto* officers as whether innocent parties had relied on apparent authority of the officer to their detriment. Since no such detrimental reliance was shown the defendant successfully challenged his arrest for kidnapping and rape. *Holloway* v. *State,* 342 So. 2d 966 (Fla. 1977). Although based on local law it is apparent that individual liberty in Florida was found to outweigh a general interest in the administration of criminal justice.

This court has repeatedly recognized the importance of personal security to citizens of a free country. "No right is held more sacred or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry* v. *Ohio,* 392 U. S. 1, 9; 88 S. Ct. 1868; 20 L. Ed. 2d 889, 898 (1968). The Fourth Amendment guarantee of freedom from unreasonable seizure and the Fifth Amendment guarantee of freedom from seizure without due process of law have been denied Duker Bogard without a compelling reason.

CONCLUSION

A criminal defendant may always challenge the legal authority for his arrest. A writ of certiorari should be issued to review the opinion of the Kentucky Court of Appeals to the contrary entered November 2, 1984.

This the —— day of June, 1985.

Respectfully submitted,

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Attorneys for Petitioner

APPENDIX

APPENDIX A

OPINION RENDERED: NOVEMBER 2, 1984; 10:00 am.
TO BE PUBLISHED
AS MODIFIED: NOVEMBER 9, 1984; 3:00 p.m.

COURT OF APPEALS OF KENTUCKY

No. 84-CA-45-DG

DUKER BOGARD - - - - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY - - - *Appellee*

Appeal from Boyle Circuit Court
Honorable Charles R. Luker, Special Judge
Cases No. 82-X-06 and 82-X-07

AFFIRMING AND REMANDING

BEFORE: HAYES, Chief Judge, REYNOLDS and DUNN, Judges.

DUNN, JUDGE. Bogard was cited for DUI by Steve Tolson, who had been hired by the City of Danville as a police officer. The Boyle County District Court dismissed the charges based on the fact that Tolson was not a qualified voter in Boyle County wherein the City of Danville was contained and, therefore, did not qualify as policeman under KRS 95.440 and, therefore, was not qualified to issue citations. On appeal to the Boyle Circuit Court this judgment was reversed. Discretionary review to this court was granted.

The issues before us are: 1) Was Tolson a qualified police officer pursuant to the provisions of KRS 95.440, and 2) if he was not, was his citation of Bogard invalid so that

it was appropriate to dismiss the charges against him? We find negatively on both issues and affirm the order of the Boyle Circuit Court on the appeal to it from the District Court.

In order to decide the first issue we must consider KRS 95.440(2) as it stood in 1968, the effective date of KRS 15.335, which we must also consider, and KRS 95.440 as it stood in 1980 when it was last amended.

In pertinent part KRS 95.440(2) that was in effect in 1968 was:

> (2) Each member of the police or fire department in cities of the second and third classes shall be a qualified voter of the county containing the city of employment. . . .

There being no constitutional provision to the contrary,[1] is was impliedly repealed by KRS 15.335 effective in 1968 which in its entirety was and still is as follows:

> Residence or voting eligibility not to disqualify peace officer. No person shall be disqualified from holding a position as a peace officer by reason of his residence or voting eligibility, except as provided in the Constitution.

However, effective July 15, 1980, KRS 95.440(2) was amended and in pertinent part now is as follows:

> (2) Each member of the police or fire department in cities of the second or third classes *and urban county governments* shall be a qualified voter in the county

---

[1] "Officers" referred to in Section 234 of the Kentucky Constitution are only those directly named and designated in the Constitution. *City of Newport* v. *Schindler,* Ky., 449 S. W. 2d 17 (1970).

> containing the city of employment, . . . (emphasis added)

Other than an addition of a new paragraph which has no application here, the only change resulting from the amendment was to add the emphasized words, "and urban county governments", to paragraphs (1), (2), (3), and (4), each of which dealt with qualifications or other rules pertaining to police and firemen.

The Commonwealth maintains KRS 15.335 continues to outlaw residency and voting eligibility as a peace officer qualification, and Bogard maintains the 1980 amended KRS 95.440(2) in turn impliedly repealed KRS 15.335 and that the residency and voting eligibility requirement it banned had been resurrected.

Appellee's reliance on 1A Sutherland, *Statutes and Statutory Construction,* § 23.29 (4th ed. 1972) that deals with the effect of reenactment of a statute on intermediate acts is misplaced. The rules of statutory construction applicable to our situation are contained in § 23.28 of that work which is entitled "repeal and reenactment."

The first rule is:

> The reenactment of a statute which has been repealed by specific provision, or by implication from later legislation upon the subject matter invalidates the previous repeal and restores the statute to effective operation.

As noted above, the voting eligibility qualifications for peace officers of the then KRS 95.440(2) was repealed by implication in 1968 by the enactment of KRS 15.335. The 1980 enactment of the amendment to KRS 95.440(2) by implication invalidates that repeal.

The second applicable rule, however, limits the repeal by implication to some extent. It provides:

> . . . . When, however, an existing statute is reenacted by a later statute, in substantially the same terms, a repeal by implication is effectuated only of those provisions which are omitted from reenactment, while the unchanged provisions which are reiterated in the new enactment are construed as having been continuously in force. . . .

See Grieb v. *Jefferson County Fiscal Court,* 249 Ky. 659, 61 S. W. 2d 285 (1933). The enactment of the 1980 amendment to KRS 95.440(2) was in substantially the same terms as the then KRS 95.440(2) repealed by implication by the enactment of the 1968 KRS 15.335 concerning the voter eligibility qualification. The only change was to add police officers of urban county governments to those officers affected by the act.

At first blush, therefore, it would seem that the unchanged term of "voter eligibility" continued in force to the same degree as before, i.e. that it had been impliedly repealed by the 1968 enactment of KRS 15.335. This interpretation, however, is absurd when one considers that such would give a negative "continuing in force" effect to an affirmative "continuing in force" effect requirement of the rule.

The absurdity of this interpretation is enhanced when we consider another basic rule of statutory interpretation. It is presumed that the legislature is acquainted with the law on the subjects on which it legislates and is informed of previous legislation and of the construction that it has previously received. *See Schooler* v. *Commonwealth,* Ky. App., 628 S. W. 2d 885 (1982). Where the legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and it is not the province of a court to introduce an exception by construction. *Hawley Coal Company* v. *Bruce,* Ky., 67 S. W. 2d

703 (1934); *Commonwealth* v. *Boarman,* Ky. App., 610 S. W. 2d 922 (1980).

Here, the legislature deliberately considered 3 separate paragraphs of the statute, one of which is that with which we are concerned, in adding police officers of urban county government to each. We cannot deny the application of this latter rule, when we could actually ignore indulging in the statutory speculation it creates, and still determine that the legislature was aware of the provision of: 1) voter eligibility qualification of KRS 95.440(2) before the 1968 enactment of KRS 15.135, 2) its repeal by implication, and 3) its resurrection by implied repeal of KRS 15.135 by the 1980 amendment reenactment of the pre 1968 KRS 95.-440(2) voter eligibility qualification.

Another facet of the first issue is posed by another rule of statutory interpretation:

> . . . Where two statutes deal with the same subject matter, the one treating it in a particular manner is preferred over the general. This is true where the specific statute is the latter of the two. . . .

Heady v. *Commonwealth,* Ky., 597 S. W. 2d 613 (1980); *Schooler, supra.* Here the 1980 KRS 95.440(2), the latter statute of the two, treats the subject in a particular manner, while the 1968 KRS 15.135 treats it in a general manner. Therefore, the 1980 enactment of KRS 95.440(2) is to be preferred.

We conclude that the 1980 enactment of the amendment to KRS 95.440(2) repealed by implication the provision of KRS 15.135, and Tolson, because he was not a qualified voter in Boyle County, did not qualify as a police officer of the City of Danville at the time he issued the DUI citation against Bogard.

The second issue can be dealt with in a more summary manner. If KRS 15.135 had not been impliedly repealed as we have held, there would be no question about the legality of Tolson's issuance of the DUI citation on Bogard. Since all legal requirements would have been met by his appointment he would have functioned as a "de jure" officer. We agree with the Commonwealth in that the trial court did not find Tolson to be a "de jure" officer. In its order it stated that his actions "were those of an officer de jure" not that he functioned as one. He was a "de facto" officer — that is he was acting under color of authority and as far as the public or third persons are interested, acting as if he were a "de jure" officer. *See Trimble County Fiscal Court* v. *Trimble County Board of Health,* Ky. App. 587 S. W. 2d 276 (1979). As such his official acts, performed in good faith, are made valid from motives of public policy to preserve third persons' and the general public's rights. His acts cannot be attacked in a collateral proceeding. *Healy* v. *City of Covington,* Ky., 202 S. W. 2d 725 (1947). *See also Burkhart* v. *Blanton,* Ky., 635 S. W. 2d 328 (1982). The logic of Bogard's conclusion and argument that validating Tolson's actions does not preserve the rights of the general public, completely escapes us. Any criminal citation or charge, including DUI, is prosecuted by the Commonwealth on behalf of the general public. Dismissal of those charges by the district court certainly was against the interests of the general public.

We conclude, therefore, that Tolson's citation of Bogard was not invalid and the district court's dismissal of the charges was inappropriate. Since the dismissal of the charges was pursuant to Bogard's own preliminary motions and prior to the empaneling of a jury or an announcement of readiness, it did not constitute jeopardy. This case should be remanded to the Boyle County District

Court for reinstatement and trial of the DUI charges against Bogard.

The order of the Boyle Circuit Court is AFFIRMED and this case is REMANDED to the Boyle County District Court for proceedings consistent with this opinion.

REYNOLDS, JUDGE, CONCURS.

HAYES, CHIEF JUDGE, CONCURS BY SEPARATE OPINION.

HAYES, CHIEF JUDGE, CONCURRING: I concur in the result reached by the majority. I would hold, however, that KRS 95.440(2) effective as of July 15, 1980 is constitutionally impermissible as there is no rational or reasonable basis for the "qualified voter" requirement nor is there any compelling state interest for such a requirement. Therefore, KRS 15.335 as enacted in 1968 is still effective and applies here.

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APPENDIX B

COURT OF APPEALS OF KENTUCKY

No. 84-CA-45-DG

DUKER BOGARD - - - - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY - - - *Appellee*

Appeal from Boyle Circuit Court
Honorable Charles R. Luker, Special Judge
Action Nos. 82-X-06 and 82-X-07

ORDER DENYING PETITION FOR REHEARING, MODIFICATION OR EXTENSION

BEFORE: HAYES, Chief Judge, DUNN and REYNOLDS, Judges.

The Court having considered the Petition for Rehearing, Modification or Extension and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

ENTERED: January 11, 1985

(s) Charles A. Reynolds
Judge, Court of Appeals

APPENDIX C

SUPREME COURT OF KENTUCKY

85-SC-107-D
(84-CA-45-DG)

DUKER BOGARD - - - - - - - - *Movant*

v.

COMMONWEALTH OF KENTUCKY - - - *Respondent*

Boyle Circuit Court
#82-X-06 & #82-X-07

AND

85-SC-90-D
(84-CA-45-DG)

COMMONWEALTH OF KENTUCKY - - - - *Movant*

v.

DUKER BOGARD - - - - - - - *Respondent*

Boyle Circuit Court
#82-X-06 & #82-X-07

ORDER

The motions of Duker Bogard and Commonwealth of Kentucky for a review of the decision of the Court of Appeals are denied.

The opinion of the Court of Appeals is hereby ordered to be published.

ENTERED: April 24, 1985.

(s) Robert F. Stephens
Chief Justice

APPENDIX D

COMMONWEALTH OF KENTUCKY
50TH JUDICIAL CIRCUIT

BOYLE CIRCUIT COURT

Cases No. 82-X-06 and 82-X-07

COMMONWEALTH OF KENTUCKY, - - - *Appellant,*

v.

TONY WILLIAMS, - - - - - - - *Appellee,*

AND

COMMONWEALTH OF KENTUCKY, - - - *Appellant,*

v.

DUKER BOGARD, - - - - - - - *Appellee.*

FINAL JUDGMENT — Entered December 8, 1983

This Court, by Judgment dated July 25, 1983, adopted the memorandum opinion of the preceding Judge and dismissed the case, leaving unanswered the question of whether an arrest by an otherwise qualified police officer is void or voidable because the officer lived outside the county of his employment.

On motion of the Commonwealth, that Judgment was set aside for Briefs on the unanswered question.

The Commonwealth has submitted such Brief but the Defendants have not.

IT IS ORDERED AND ADJUDGED that the actions of Steve Tolson in placing charges against the Defendants in these cases were those of an officer de jure and the legality of his acts as such cannot be collaterally attacked in a pro-

ceeding to which he is not a party. Petrey v. City of Hazard, Ky., 346 S. W. (2) 534 (1961); Burkhart v. Blanton, Ky., 635 S. W. (2) 328 (1982).

These cases are remanded to the Boyle District Court for proceedings consistent with this Opinion.

This 7th day of December, 1983.

(s) Charles R. Luker
Special Judge,
Boyle Circuit Court

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(Clerk's initials and date)

APPENDIX E

COMMONWEALTH OF KENTUCKY
50TH JUDICIAL CIRCUIT

BOYLE CIRCUIT COURT

COMMONWEALTH OF KENTUCKY, - - - *Appellant,*

v.

TONY WILLIAMS, - - - - - *Appellee,*

AND

COMMONWEALTH OF KENTUCKY, - - - *Appellant,*

v.

DUKER BOGARD, - - - - - - *Appellee.*

Appeals from the Boyle District Court
Honorable Harold S. Burks, Presiding
Cases No. 82-X-06 and 82-X-07

MEMORANDUM OPINION AND ORDER FOR BRIEFS

Entered May 25, 1983

These matters are on appeal from the Boyle District Court dismissing the actions on grounds the arresting officer was not a registerd voter of the City of Danville at the time of defendants' arrest. Oral argument is not granted because the court found nothing in the record or evidence, including briefs, which would require or command the court to grant an oral argument.

These cases have been exhaustively pursued both in the court and press. They present a typical case of laws being passed like popcorn without sufficient thought or research

being involved. K.R.S. 15.335, passed in 1968, can only be said to add another weed in the garden of laws. It does not, however, replace KRS 95.440(2), directly or by implication.

The provisions of § 234 of the Kentucky Constitution were applied to police officers in the past. However, this application was changed by the Court of Appeals in *City of Newport* v. *Schindler,* 449 S. W. 2d 17 (Ky. 1970). The court held that a police officer was not the type of "officer" the § 234 referred to because it was not directly named or designated in the Constitution. This case's holding essentially said a police officer in a city of the third class must reside in the *county* where he is employed but not the city. KRS 95.440, amended effective July 15, 1980, also provides county but not city residence. (Emphasis supplied by court)

After closer examination, it is determined that the new KRS 446.250, effective February 5, 1982, is not applicable to this situation either because it applies to conflicts "between measures amending the *same* section of statutes." Of course, that is not the case here.

To help solve the problem one must apply the rules of statutory construction. The Court in *City of Bowling Green* v. *Board of Education of Bowling Green Independent School District,* 443 S. W. 2d 243, 247 (Ky. 1969), states the three primary rules of statutory construction to be:

> (1) That it is the duty of the court to ascertain the purpose of the General Assembly, and to give effect to the legislative purpose if it can be ascertained; (2) that conflicting Acts should be considered together and harmonized, if possible, so as to give proper effect and meaning to each of them; and (3) that as between legislation of a broad and general nature on the one

> hand, and legislation dealing minutely with a specific matter on the other hand, the specific shall prevail over the general. By applying the above rules to the present situation, KRS 95.440(2), as applied to a police officer's city *or* county residency, was partially repealed by KRS 15.335 upon the latter's passage in 1968. Then, in 1980, KRS 95.440(2) provided for *county;* not city residency. Apparently that is the law at this moment. (Emphasis supplied.)

Contrary to the foregoing position there were two cases upholding KRS 95.440(2) which then required a police officer to be a qualified voter. They are *White* v. *City of Hopkinsville,* 280 Ky. 661, 134 S. W. 2d 236 (Ky. 1939), and *City of Middlesborough* v. *Grubbs,* 363 S. W. 2d 95 (Ky. 1962). These cases were to be the final word on the subject until *City of Newport, supra,* in 1970.

The Constitution, Section 234, provides that officers must be residents but the Court of Appeals has held a policeman is not an "officer" within the provisions of Section 234. KRS 95.440(2), since 1980, provides policemen must be qualified voters of the county. So now both KRS 95.440(2) and KRS 15.335 present no prohibition to a police officer in a city of the third-class from living outside the City of Danville. This court so holds.

This court is still faced with the unbriefed question of whether an arrest made by an otherwise qualified, sworn, police officer who has been given the power of arrest, uniform and badge is void or voidable because at the time of the arrest he lived outside the county of his employment. In other words was the officer at least a *de facto* if not *de jure* police officer? The appellant is given thirty (30) days and appellee twenty (20) days thereafter to furnish briefs on the question to this court.

It is so ORDERED.

25 May 1983.

(s) Henry V. Pennington
Henry V. Pennington
Circuit Judge

APPENDIX F

COMMONWEALTH OF KENTUCKY
50TH JUDICIAL CIRCUIT

BOYLE DISTRICT COURT

No. 82-T-635

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

DARYL BOGARD - - - - - - - *Defendant*

ORDER OF DISMISSAL—Entered October 19, 1982

This matter coming on for hearing before the Court on October 11, 1982, on various motions of Defendant, both parties appearing by counsel, the Court having heard the arguments of counsel and having considered the Affadavit (sic) of Pat Logue, Deputy Clerk, tendered by Defendant, and the Court being otherwise sufficiently advised;

It is hereby ordered that this case be dismissed with prejudice and stricken from the docket on the authority of KRS 95.440.

Given under my hand this 19th day of October, 1982.

(s) Harold S. Burks
Judge, Boyle District Court

HAVE SEEN:

(s) George M. McClure
Attorney for Commonwealth

(s) (Illegible)
Attorney for Defendant

AOC-77-308
Commonwealth of Kentucky
Court of Justice

CRIMINAL MOTION HOUR and
PRE-TRIAL CONFERENCES

CALENDAR

Date October 11, 1982

Time 10:30 a.m.

page 1

SECOND DIVISION BOYLE DISTRICT COURT HON. HAROLD S. BURKS JUDGE

Case No.	Style	Charges or Claim	Proceedings
82-M-609	COMMONWEALTH vs. T. J. McCORMACK	Violation of Planning and Zoning Ordinance	Pass ~~to~~ 11/3
City	(Hon. Stephen Shewmaker, p/r)	ordinance 421A	Defendant taken matter under advisement.
	ENTERED OCT 11 1982 CLERK, BOYLE CIRCUIT COURT		
		Motion to Dismiss	
82-T-635 ★	COMMONWEALTH vs. DARYL BOGARD	DUI BA refused	Motion is allowed -
City	(Hon. Richard Clay, p/r)	KRS 189.520	
	A TRUE COPY ATTEST: Lucille H. Bruce, Clerk BY: _____ D.C.	Motion for Jury Trial and Suppression Hearing	Offense occurring in a residence
Boyle County by		on a [illegible]	
waiver is dismissed		i.a.w. KRS 95.440	

APPENDIX G

Judge Signature

Date OCTOBER 11, 1982

APPENDIX G-1

KENTUCKY REVISED STATUTES

CITIES OF THE SECOND AND THIRD CLASSES AND URBAN-COUNTY GOVERNMENTS

95.440 Police and fire department members; qualifications; examination; tenure; reinstatement

* * * * * * *

(2) Each member of the police or fire department in cities of the second and third classes and urban-county governments shall be a qualified voter in the county containing the city of employment, able to read, write and understand the English language, and have such other qualifications as may be prescribed. No person shall be appointed a member of the police or fire department unless he is a person of sobriety and integrity and is and has been an orderly, law-abiding citizen. In a city of the second class or urban-county government no person shall be appointed a member of either of such departments if he is over fifty (50) years of age.

* * * * * * *

APPENDIX G-2

431.005 Arrest by peace officers; by private persons

(1) A peace officer may make an arrest:

(a) In obedience to a warrant; or

(b) Without a warrant when a felony is committed in his presence; or

(c) Without a warrant when he has reasonable grounds to believe that the person being arrested has committed a felony; or

(d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or

(e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his presence.

(2) Any peace officer may arrest without warrant when he has reasonable grounds to believe that if the person is not arrested he will present a danger or threat of danger to others if not immediately restrained and in addition he has probable cause for believing that said person has intentionally or wantonly caused physical injury to his spouse, parent, grandparent, child, or stepchild. Within twelve (12) hours following apprehension and booking of a person arrested under this section, an officer shall return to the abused person, if the abused person is an adult, and request that a signed, written statement be made by the abused person stating that an abuse occurred and the person who committed it. If the abused person refuses to sign the statement, the charges shall be summarily dismissed and the defendant released from custody.

(3) For purposes of subsection (2) of this section a "peace officer" is a full-time sworn officer of the Kentucky state police, a full-time city policeman, a full-time county

policeman, a full-time city-county policeman, a duly elected sheriff, or a full-time paid deputy sheriff.

(4) A private person may make an arrest when a felony has been committed in fact and he has reasonable grounds to believe that the person being arrested has committed it.

APPENDIX G-3

CITY OF DANVILLE ORDINANCE (1977)

10.110 Qualifications of Policeman and Fireman Applicants

In addition to the qualifications prescribed in KRS 95.440(2) requiring an applicant for the position of policeman or fireman in this city to be able to read, write and understand the English language and to be a registered voter of this City, pursuant to KRS 95.430 (2) and KRS 95 440 (2), the following additional requirements which shall be met by applicants for said positions are hereby ordained:

(a) Be a citizen of the United States of America.

(b) Be a person of sobriety, good moral habits, and of good reputation as evidenced by written, signed and notarized affidavits of at least three reputable persons.

(c) Be at least twenty-one (21) years of age and not more than forty-five (45) years of age at the time of employment, except firemen who shall be at least eighteen (18) years of age and not more than forty-five (45) years of age at the time of employment, and except as otherwise herein ordained.

(d) Must weigh at least 150 pounds, and not more than 230 pounds, and be at least 5′8″ tall, but not more than 6′4″ tall, unless this requirement be waived by the Common Council.

(e) Must satisfactorily pass a physical, mental, and phychological examination at applicant's expense administered by a licensed, practicing physician designated by the Common Council of this City, or person or persons designated by its resolution to

administer such examinations. Physical examinations may be given to members of the police and fire departments each calendar year and if the employee is found physically unfit to serve in his position he may be reduced in grade, transferred in position, or honorably discharged from his employment.

(f) Must satisfactorily impress the Common Council in a *personal interview* of his desire, ability, and capabilities to be accepted for the position applied for.

(g) All members of the police and fire departments of this City shall be required to participate in and satisfactorily complete all training programs, both within and without this City, as prescribed from time to time by the Common Council, and failure or refusal to so participate or to successfully complete same shall be sufficient cause for disciplinary action, dismissal, or reduction in grade of such member.